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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,906	03/30/2004	Solomon Trainin	P-6408-US	3188
49444 7590 05/20/2008 PEARL COHEN ZEDEK LATZER, LLP 1500 BROADWAY, 12TH FLOOR NEW YORK, NY 10036				
EXAMINER				
VO, DON NGUYEN				
ART UNIT		PAPER NUMBER		
2611				
MAIL DATE		DELIVERY MODE		
05/20/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/811,906

Applicant(s)

TRAININ ET AL.

Examiner

Don N. Vo

Art Unit

2611

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9,11-27 and 29-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,9,11,12,17-19,22-24 and 27-30 is/are rejected.
- 7) ☒ Claim(s) 5-8,13-16,20,21,25,26,31 and 32 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/11/2008 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1, 4, 9, 12, 17, 19, 22, 24, 27, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al (US 6,037,835).

Regarding claims 1, 4, 9, 12, 17, 19, 22, 24, 27, and 30, Smith, as shown in figure 1 teaches a method and apparatus for communicating comprising first receiver and second receiver (110, 112) and controller with autodetection module (102, 104, 106, 108) for autodetecting whether the received signal is of a first or second modulation type so that to select the first or second receiver for demodulating. See also column 3, line 42 to column 5, line 29.

Smith fails to teach using the system in the physical layer as recited. However, it is well known in the art that the physical layer has transmitting and receiving capabilities including modulation and demodulation.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the system of Smith into the physical layer as claimed since it is just a matter of applying the system into the physical layer.

5. Claims 2, 11, 18, 23 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al (US 6,037,835) in view of Abhishek et al (US 2007/0118742; art of record).

Smith teaches all subject matter claimed except for the specifying the modulation schemes are of CCK and OFDM types. However, Abhishek, from the same field of endeavor, teaches the physical layer operating with CCK and OFDM modulation schemes. See Abhishek: [0059]. Therefore, it would have

been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Smith by employing the CCK and OFDM modulation schemes as taught by Abhishek et al so that the system of Smith can also communicate using CCK and OFDM modulation schemes. Such modification will increase the communication capability of Smith's system and would not involve any inventive feature since it is just a matter of selecting different modulation/demodulation schemes for communicating.

Allowable Subject Matter

6. Claims 5-8, 13-16, 20, 21, 25, 26, 31 and 32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments with respect to claims 1, 2, 4, 9, 11, 12, 17-19, 22-24, and 27-30 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Reference Ninomiya et al (US 2001/0033625) is cited because it is pertinent to the method and apparatus for autodetecting the modulation scheme and using the detected modulation for demodulating accordingly.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Don N. Vo whose telephone number is (571) 272-3018. The examiner can normally be reached on Mon-Fri (9:00AM - 6:00PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MOHAMMAD GHAYOUR can be reached on (571) 272-3021. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Don N. Vo/
Primary Examiner, Art Unit 2611